IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23186 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHUBEN DINESHCHANDRA PATEL - Petitioner(s)
Versus
THE STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR UM SHASTRI for Petitioner(s) : 1,
MR KRUNAL PANDYA A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 10/09/2007

ORAL JUDGMENT

1. **RULE**. Mr. Krunal Pandya learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates for the respective

parties, the matter is taken up for final hearing today itself.

2. It is the say of the petitioner that she was born on 29th July, 1958 at village Alarsa, Taluka Borsad, District Anand. Intimation with regard to her birth was given to the office of respondent no. 2 for registration of the birth. Accordingly, her birth was registered by respondent no. 4, in the birth register. It is the say of the petitioner that recently she had applied for birth certificate which has been given to her in Village Form No. 14. On receiving the same, the petitioner learnt that name of the petitioner, date of registration and the name of petitioner's mother were not mentioned in the said certificate. She, therefore, made an application and along with it made payment of late fees also. However, respondent no. 2 intimated her by letter dated 21st August, 2007 that in accordance with the provisions of Birth and Death Registration Act, and the Rules framed thereunder, the certificate in Form No. V in accordance with the Form no. 14, is issued. However, in the said form, there is a provision that no new fact should be incorporated. Hence, her request cannot be granted. Against the same, the present petition is filed. Mr. Shastri learned advocate for the petitioner has submitted

that the impugned communication is issued under misconception of law. In support of his submission, he has placed reliance on the judgment passed by this Court dated 7th August, 2007 in Special Civil Application No. 19179/2007 and has submitted that upon due scrutiny of the material produced before the authority, it has power to incorporate missing facts in the certificate. I have perused the said judgment. While delivering the judgment, this Court has placed reliance on another decision of this Court rendered in the case of **Dipika Arvindkumar Pancholi v. State of Gujarat & Anr., reported in 2003 (1) GLH pg. 514** and the relevant passage is quoted therein. It is also required to be quoted here, which is as under:-

> "Applying the principles laid down by the Supreme Court as well as this Court in the above referred to judgments to the facts of the present case, it is seen that in clear terms the Supreme Court has held that if we interpret the statute the result of it may be unjust, however, it does not entitle the court to refuse to give it effect and this is a classic case of *casus omissi*, that is, circumstances concerning which the Act is silent. Therefore, the said power envisaged under Rule 11 of the Rules can be legitimately extended to the power to enter the name of the child even after a period of 15 years on the application of the parent or guardian of the child. If there is power with the Registrar to enter the name of the child after a period of 12 months and within 15 years from the date of registering the date of birth as per the proviso to Rule 11 of the Rules on the request of the parents or guardian of the child. I read that there is also a power with

> the Registrar to enter the name of the child even after the period of 15 years. In my opinion, it is not the case of total absence of power in the Registrar and therefore, the application of the petitioner should have been entertained by the registrar by entering the name of the child in the Registrar. I am, therefore, of the opinion that this is a fit case where power ought to have been exercised by the Registrar under Section 14 of the Act read with Rule 11 of the Rules by entertaining the application submitted by the father of the petitioner by adding name of the petitioner as requested in the application on payment of late fee of Rs.2/- or any amount of late fee as may be prescribed by the authority."

3. In view of the aforesaid, respondent no. 5 is directed to accept the application of the petitioner and upon due scrutiny of the application as well as the material furnished by the petitioner in support of the application and if, everything is found proper, enter the name of the petitioner, date of registration and the name of the petitioner's mother in the register, and issue birth certificate on the basis of the same. The petitioner shall make the application within 30 days from the date of this judgment and thereafter, respondent no. 5 will take appropriate decision thereon and further action within four weeks of the receipt of the application. If the late fee paid by the petitioner is already refunded to her, she will pay it again.

4. The petition is allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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